

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

GARY RUSSELL ELERICK,

Petitioner,

No. C 12-2477 PJH (PR)

vs.

ORDER OF DISMISSAL

WILLIAM KNIPP, Warden,

Respondent.

This is a habeas case brought pro se by a state prisoner. Petitioner had a previous case attacking the same judgment, *Elerick v. Martel*, C 09-1354 PJH (PR). The court denied that petition on the merits and denied a certificate of appealability ("COA"). Petitioner appealed, but the court of appeals recently declined to grant a certificate of appealability, terminating the appeal.

A habeas petitioner may not file a second or successive petition unless he or she first obtains from the appropriate United States Court of Appeals an order authorizing the filing. See 28 U.S.C. § 2244(b)(3)(A). Petitioner has not obtained such an order from the Ninth Circuit. The petition is accordingly **DISMISSED** without prejudice to filing a new petition if petitioner obtains the necessary order.

Because reasonable jurists would not find the court's conclusion that this petition is second or successive debatable or wrong, a COA is **DENIED**. See *Slack v. McDaniel*, 529 U.S. 473, 483 (2000) (standard). The clerk shall close the file.

IT IS SO ORDERED.

Dated: August 8, 2012.



PHYLLIS J. HAMILTON
United States District Judge